IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8676 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI DEVJIBHAI GILATAR PRESENTLY IN BHAVNAGAR JAIL

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR UDAY BHATT, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/10/2000

ORAL JUDGEMENT

1. Commissioner of Police, Surat City, Surat, passed an order on the 15th May, 2000, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Jayantibhai Devjibhai Gilatar of Lokmaniyanagar, Parikh Vasahat, Kurla, Mumbai-17.

2. The grounds of detention indicate that the detenu is involved in one criminal offence. There are statements of two anonymous witnesses recorded by the sponsoring authority. The detaining authority found that the witnesses, whose statements have been recorded, genuinely suffer from the fear against their person and property from the detenu and, therefore, exercised powers under Section 9(2) of the PASA Act, by not disclosing identity of these two witnesses. The detaining authority found that it is not possible to resort to less drastic remedies and it is necessary to detain the detenu under the provisions of the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities.

3. The detenu has challenged the order of detention in this petition under Article 226 of the Constitution on various grounds. However, Mr. Kapadia, learned advocate appearing for the petitioner has restricted his argument to non-supply of translated version affecting the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution and submitted that non-supply of the translated version of the documents has vitiated the continued detention of the detenu and the petition may, therefore, be allowed.

4. Mr. Bhatt, learned Assistant Government Pleader, has opposed this petition. He has argued on merits, but had to concede to the fact that, in fact, there is non-supply of documents demands on behalf of the detenu in his representation.

5. The petition deserves to be allowed only on the sole ground of non-supply of documents. A representation was made on behalf of the detenu on July 14, 2000, wherein a specific contention was raised and demand made to the effect that the detenu has studied only upto the 7th Standard at Bombay in Maharashtra State; he knows how to read and write Marathi as well as a little knowledge of Hindi and English; and that he does not know how to write Hindi and English. It was contended that the detenu does not know how to read or write Gujarati language, as his mother tongue is Marathi. He has come to Surat on the 24th February, 2000 to attend a marriage function and has been detained. Even the grounds of detention indicate that the detenu stays at Bombay. The respondents have not filed any affidavit in reply. However, Mr. Bhatt, in all fairness, upon instructions and after verifying the files, has conceded to the fact that translated version of the documents have not been

supplied to the detenu. This being so, the detenu's right of making an effective representation envisaged under Article 22(5) of the Constitution is infringed and his continued detention, thereafter, would get vitiated. The petition, therefore, deserves to be allowed and the same is allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated the 15th May, 2000, passed against the detenu is hereby quashed and set aside. The detenu-Jayantibhai Devjibhai Gilatar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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